

§ 429.33

43 CFR, Subtitle B, Ch. I (10–1–09 Edition)

(f) Any renewal of use authorizations for existing private exclusive recreational or residential uses of Reclamation land, facilities, and waterbodies will not exceed 20-year terms. Any such renewals will be subject to the periodic reviews described in paragraphs (a) and (b) of this section and these reviews could potentially result in the termination of the use agreement prior to the end of the term of years.

(g) Upon non-renewal or termination of a use authorization for an existing private exclusive recreational or residential use of Reclamation land, facilities, and waterbodies, the grantee will remove any improvements from the site within 90 days from the date of termination or non-renewal of the use authorization. The grantee will return the property as near as possible to its original undisturbed condition. Any property not removed within 90 days may be removed by Reclamation at the expense of the prior grantee.

(h) Renewal decisions of use authorizations for existing private exclusive recreational or residential uses located on Reclamation land, facilities, and waterbodies will be made by the Regional Director. If the Regional Director determines that deficiencies identified under paragraph (d) of this section cannot be corrected prior to the expiration date of the use authorization, the use authorization may be extended for a period not to exceed 6 months.

(i) Requests for the renewal, extension, or reissuance of use authorizations for private exclusive recreational or residential uses that expired and were not renewed prior to the effective date of this part and were not renewed or are subsequently not renewed or terminated under the procedures of this section will be considered requests for uses prohibited under § 429.31 and will not be approved. Conversely, requests for the renewal, extension, or reissuance of use authorizations for private exclusive recreational or residential uses that were in existence on the effective date of these regulations and that are in compliance with all requirements of the applicable use authorization at the time a request is made will not be considered requests for uses prohibited under § 429.31. Re-

quests for renewal, extension, or reissuance of use authorizations for private exclusive recreational or residential uses must be made by submitting Form 7-2540 as stated under § 429.10(b) and in compliance with subpart D of this part.

(j) Unauthorized existing private exclusive recreational or residential uses will be administered under §§ 429.31 and 429.33 and part 423 of this chapter.

§ 429.33 What are the consequences for using Reclamation land, facilities, and waterbodies without authorization?

(a) Reclamation may seek to collect the following:

(1) All administrative costs incurred by Reclamation in resolving the unauthorized use;

(2) All costs of removing structures, materials, improvements, or any other real or personal property;

(3) All costs of rehabilitation of the land, facilities, or waterbodies as required by Reclamation.

(4) The use fee that would have applied had your use been authorized from the date your unauthorized use began;

(5) Interest accrued on the use fee from the date your unauthorized use began as specified in paragraph (a)(4) of this section; and

(6) The interest charge rate shall be the greater of either the rate prescribed quarterly in the FEDERAL REGISTER by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month. The interest charge rate will be determined as of the due date and remain fixed for the duration of the delinquent period.

(b) As an unauthorized user, you will receive a written notice in which Reclamation will outline the steps you need to perform to cease your unauthorized use.

(c) If appropriate, you will receive a final determination letter detailing the applicable costs and fees, as set forth under paragraph (a) of this section, which must be paid to Reclamation for your unauthorized use. Payment must be made within 30 days of receipt of this letter unless Reclamation extends this deadline in writing. Failure to

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make timely payment may result in administrative or legal action being taken against you.

(d) Reclamation may determine that issuing a use authorization to you for an existing unauthorized use is not appropriate; and may deny future use applications by you because of this behavior. As noted at § 429.15, use authorizations are always issued at Reclamation's discretion.

(e) If, however, your unauthorized use is deemed by Reclamation to be an unintentional mistake, consideration may be given to issuing a use authorization provided that you qualify and meet the criteria at § 429.14; and, in addition to the normal costs, you agree to pay the following:

(1) The use fee that would have been owed from the date your unauthorized use began; and

(2) Interest accrued on the use fee from the date your unauthorized use began as specified in paragraph (f)(1) of this section.

(f) Under no circumstances will your unauthorized use or payment of monies to the United States in association with an unauthorized use either:

(1) Create any legal interest or color of title against the United States; or

(2) Establish any right or preference to continue the unauthorized use.

(g) Under part 423 of this chapter, unauthorized use of Reclamation land, facilities, or waterbodies is a trespass against the United States. You may be subject to legal action including criminal prosecution as specified under § 423.71.

Subpart I—Decisions and Appeals

§ 429.34 Who is the decisionmaker for Reclamation's final determinations?

(a) The appropriate Regional Director, or the Regional Director's designee, makes any final determination associated with an action taken under this rule and will send that final determination in writing to you by mail.

(b) The Regional Director's final determination will take effect upon the date of the final determination letter.

§ 429.35 May I appeal Reclamation's final determination?

(a) Yes, if you are directly affected by a final determination, you may appeal by writing to the Commissioner within 30 calendar days after the postmark date of the Regional Director's determination letter.

(b) You have an additional 30 calendar days after the postmark of your written appeal to the Commissioner within which to submit any additional supporting information.

(c) The Regional Director's final determination will remain in effect until the Commissioner has reviewed your appeal and provided you with that decision, unless you specifically request a stay and a stay is granted by the Commissioner.

§ 429.36 May I appeal the Commissioner's decision?

(a) Yes, you may appeal the Commissioner's decision by writing to the Director, Office of Hearing and Appeals (OHA), U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

(b) For an appeal to be timely, OHA must receive your appeal within 30 calendar days from the date of mailing of the Commissioner's decision. Rules that govern appeals to OHA are found at part 4, subparts B and G, of this title.

(c) Notwithstanding the provisions of § 4.21(a) of this title, the Commissioner's decision will take effect upon issuance and remain in effect unless you specifically request a stay and a stay is granted under § 4.21(b) of this title.

§ 429.37 Does interest accrue on monies owed to the United States during my appeal process?

Except for any period in the appeal process during which a stay is then in effect, interest on any nonpayment or underpayment, as provided in § 429.33(a), continues to accrue during an appeal of a Regional Director's final determination, an appeal of the Commissioner's decision to OHA, or during judicial review of final agency action.